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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE CEMETERY AND FUNERAL BUREAU**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

Case No. A1 2018 22

14 **DAY & NIGHT REMOVALS &**
15 **CREMATIONS, ALEJANDRO P. DIAZ**
16 **16760 Stagg Street, #203**
17 **Van Nuys, CA 91406**

ACCUSATION

18 **Crematory License No. CR 293,**

19 **JOHN C. RAGGETT**
20 **14530 Anson Ave.**
21 **Santa Fe Springs, CA 90670**

22 **Crematory Manager License No. CRM 361,**

23 **and**

24 **ALEJANDRO DIAZ**
25 **P.O. Box 4118**
26 **Lancaster, CA 93539**

27 **Crematory Manager License No. CRM 551**

28 **Respondents.**

1 Complainant alleges:

2 **PARTIES**

3 1. Gina Sanchez (Complainant) brings this Accusation solely in her official capacity as
4 the Bureau Chief of the Cemetery and Funeral Bureau (Bureau), Department of Consumer
5 Affairs.

6 2. On or about March 25, 2009, the Bureau issued Crematory License No. CR 293 to
7 Day & Night Removals & Cremations, Alejandro P. Diaz (Respondent Day & Night). Day &
8 Night Removals & Cremations is owned by individual licensed owner Alejandro P. Diaz.
9 Alejandro Diaz, Alejandro P. Diaz's son, was the designated Crematory Manager from May 15,
10 2009, to October 12, 2016. John C. Raggett was the designated Crematory Manager from March
11 25, 2009, to May 15, 2009, and since January 11, 2017. The Crematory License was in full force
12 and effect at all times relevant to the charges brought herein and will expire on March 31, 2020,
13 unless renewed.

14 3. On or about November 17, 2004, the Bureau issued Crematory Manager License No.
15 CRM 361 to John C. Raggett (Respondent Raggett). The Crematory Manager License was in full
16 force and effect at all times relevant to the charges brought herein and will expire on November
17 30, 2019, unless renewed.

18 4. On or about February 11, 2009, the Bureau issued Crematory Manager License No.
19 CRM 551 to Alejandro Diaz (Respondent Diaz). The Crematory Manager License expired on
20 February 28, 2017, and has not been renewed.

21 **JURISDICTION**

22 5. This Accusation is brought before the Director of the Department of Consumer
23 Affairs (Director) for the Bureau, under the authority of the following laws. All section
24 references are to the Business and Professions Code unless otherwise indicated.

25 6. Section 7686 of the Code states:

26 "The bureau may suspend or revoke licenses, after proper notice and hearing to the
27 licensee, if the licensee has been found guilty by the bureau of any of the acts or omissions
28 constituting grounds for disciplinary action. The proceedings under this article shall be conducted

1 in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the
2 bureau shall have all the powers granted therein.”

3 7. Section 118 of the Code states, in part:

4 “(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
5 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
6 order of a court of law, or its surrender without the written consent of the board, shall not, during
7 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
8 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
9 provided by law or to enter an order suspending or revoking the license or otherwise taking
10 disciplinary action against the licensee on any such ground.”

11 8. Section 7711.1 of the Code states, in part:

12 “Unprofessional conduct by any licensee or registrant or by any agent or employee of a
13 licensee or registrant constitutes grounds for disciplinary action. Unprofessional conduct includes,
14 but is not limited to, the following:

15 “(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
16 violation of this chapter [Cemetery and Funeral Act, Bus. & Prof. Code, § 7600, et seq.] and any
17 regulation adopted thereunder, or of any federal or state law or regulation governing the
18 disposition of human remains, operation of cemeteries or crematories, the sale of cemetery
19 property, or the sale of crematory services or commodities.”

20 9. Section 7712.9 of the Code states, in part:

21 “(a) Every crematory licensee operating a crematory pursuant to a license issued in
22 compliance with this article shall pay an annual regulatory charge for each crematory, to be fixed
23 by the bureau at not more than four hundred dollars (\$400). In addition to an annual regulatory
24 charge for each crematory, every licensee operating a crematory pursuant to a license issued
25 pursuant to this article shall pay an additional charge to be fixed by the bureau at not more than
26 eight dollars and fifty cents (\$8.50) per cremation made during the preceding quarter, which
27 charges shall be deposited in the Cemetery and Funeral Fund.”

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10. Section 7713 of the Code states, in part:

“(b) The designated crematory manager shall be responsible for exercising direct supervision and control over the operations, employees, and agents of the crematory as is necessary to ensure full compliance with the applicable provisions of this code, the Health and Safety Code, and any regulations adopted thereto. Failure of the designated crematory manager or the licensed crematory to exercise that supervision or control shall constitute a ground for disciplinary action.”

11. California Code of Regulations, title 16, section 2310 states, in part:

“(b) The annual regulatory charge to be paid by every licensed crematory is fixed at the sum of four hundred dollars (\$400). An additional quarterly charge of eight dollars fifty cents (\$8.50) for each cremation made during the preceding quarter shall be paid to the Bureau.”

12. California Code of Regulations, title 16, section 2385 states, in part:

“(b) When a citation containing an assessment of an administrative fine, an order of abatement, or both an administrative fine and an order of abatement is not contested or if the citation is appealed and the person or entity cited does not prevail, failure to pay the fine or abate the violation charged within thirty (30) days of the issuance or affirmation shall constitute a violation and may result in disciplinary action being taken by the bureau chief, or his or her designee. When a citation is not contested and a fine is not paid, the full amount of the fine shall be added to the fee for renewal of the license and the license shall not be renewed without payment of the renewal fee and fine.”

COST RECOVERY

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

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1 **FACTUAL SUMMARY**

2 14. Respondent Day & Night operates two cremation chambers and has performed an
3 average of more than 3,450 cremations per year from 2015 through 2018, averaging
4 approximately 863 cremations per quarter over the four years. All licensed crematories are
5 required to complete a Crematory License Quarterly Report, which must indicate the total number
6 of cremations performed for the preceding quarter. The licensed crematory must pay \$8.50 to the
7 Bureau for each cremation performed. However, Respondent Day & Night has failed to pay the
8 Bureau the required fee of \$8.50 for each cremation performed at the crematory over the course
9 of multiple quarters from 2015 through 2018, resulting in estimated losses to the Bureau of more
10 than \$80,000.

11 15. On or about October 6, 2016, November 17, 2016, January 6, 2017, March 15, 2017,
12 and May 5, 2017, the Bureau sent late notice letters to Respondent Day & Night requesting
13 payment of the required cremation fees that were unpaid for certain quarters in 2015 and 2016.

14 16. On February 20, 2018, the Bureau issued Citation IC 2018 22 to Respondent Day &
15 Night. The Citation included an administrative fine of \$100 and an order of abatement directing
16 the crematory to submit the missing fees for the 1st through 3rd quarter of 2015, 2nd and 3rd
17 quarter of 2016, and the 2nd and 3rd quarter of 2017. Respondent Day & Night paid the \$100
18 fine but has not fully complied with the order of abatement.

19 17. To date, the licensees have failed to file the required quarterly reports and remit
20 payment of the required fees for each cremation made during the 2nd quarter of 2015, 2nd and
21 3rd quarters of 2016, 2nd, 3rd, and 4th quarters of 2017, and the 1st through 4th quarters of 2018.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct)**

24 18. Respondents are subject to disciplinary action under section 7711.1, on the grounds of
25 unprofessional conduct, for violating California Code of Regulations, title 16, section 2310,
26 subdivision (b), by failing to timely pay the regulatory fee of \$8.50 for each cremation to the
27 Bureau and file the quarterly reports with the Bureau, as required. Complainant refers to, and by
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1 this reference incorporates, the allegations set forth in paragraphs 14 through 17, above, as though
2 set forth fully herein.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct)**

5 19. Respondents are subject to disciplinary action under section 7711.1, on the grounds of
6 unprofessional conduct, for violating California Code of Regulations, title 16, section 2385,
7 subdivision (b), by failing to comply with Citation No. IC 2018 22's order of abatement.
8 Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs
9 14 through 18, above, as though set forth fully herein.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Failure to Ensure Compliance)**

12 20. Respondents Diaz and Raggett are subject to disciplinary action under sections
13 7711.1 and 7713, subdivision (b), of the Code, in that they failed to ensure compliance with the
14 Cemetery and Funeral Act. Complainant refers to, and by this reference incorporates, the
15 allegations set forth in paragraphs 14 through 19, above, as though set forth fully herein.

16 **DISCIPLINE CONSIDERATION**

17 21. To determine the degree of discipline, if any, to be imposed on Respondent Day &
18 Night, Complainant alleges that on or about February 20, 2018, the Bureau issued Citation No. IC
19 2018 22 with a fine of \$100 and ordered Respondent to immediately submit the required fees for
20 each cremation made during the quarters listed therein to comply with California Code of
21 Regulations, title 16, section 2310. The fine was paid, but, to date, Respondent Day & Night has
22 failed to fully comply with the order of abatement. That Citation is now final and is incorporated
23 by reference as if fully set forth.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of the Department of Consumer Affairs issue a decision:

1. Revoking or suspending Crematory License No. CR 293, issued to Day & Night Removals & Cremations, Alejandro P. Diaz;

2. Revoking or suspending Crematory Manager License No. CRM 361, issued to John C. Raggett;

3. Revoking or suspending Crematory Manager License No. CRM 551, issued to Alejandro Diaz;

4. Ordering Day & Night Removals & Cremations, Alejandro P. Diaz, John C. Raggett and Alejandro Diaz to pay the Cemetery and Funeral Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

5. Taking such other and further action as deemed necessary and proper.

DATED: 3/28/19


GINA SANCHEZ

Bureau Chief

Cemetery and Funeral Bureau

Department of Consumer Affairs

State of California

Complainant

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